

### **REMARKS**

Claims 1, 4-6, 8, 9, 11-13 and 15-17 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 112**

Claims 6, 8, 9, 11-13 and 15-17 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants direct the Examiner's attention is directed to Claims 6, 11, and 12 which have been amended to overcome the Examiner's objections.

### **REJECTION UNDER 35 U.S.C. § 103**

Claims 1 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fernberg, "Charting a Course Toward Lower Workers' Comp Claims" in view of DiRienzo (U.S. Pat. No. 6,003,007).

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fernberg, "Charting a Course Toward Lower Workers' Comp Claims" in view of DiRienzo (U.S. Pat. No. 6,003,007) and further in view of Hammond et al. (U.S. Pat. No. 5,712,984).

Claims 6, 8, 9, 11-13, and 15-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fernberg, "Charting A Course Toward Lower Workers' Comp Claims" in view of DiRienzo (U.S. Pat. No. 6,003,007) and Anthony, "Workers'

Compensation Fraud,” and further in view of Ahmad, (U.S. Pat. No. 6,089,974). In view of the amendments and arguments herein, these rejections are respectfully traversed.

Applicants respectfully submit that Fernberg’s document “Charting a Course Toward Lower Workers’ Comp Claims” in view of referenced DiRienzo (U.S. Patent No. 6,003,007) does not teach or suggest the claimed system of the presented invention.

At the onset, Applicants assert that the method disclosed by Fernberg does not incorporate the claims audit process in conjunction with the performance evaluation process and subsequent monitoring process. Furthermore, Fernberg’s disclosure does not teach the stand-alone processes as is claimed. The Fernberg method lacks the focus and interaction activities that result in lowering workers’ compensation claims costs while mentoring and educating the assigned claims adjusters. Such continual follow-up, interaction and monitoring updates are not found within Fernberg or DiRienzo documentation. In this regard, Claim 1 contains the limitations:

reviewing the workers' compensation claims management process...

amending the workers' compensation claims management process...

monitoring the amended workers' compensation claims management process...

Fernberg’s method does not incorporate a claims audit process in conjunction with the performance evaluation process and subsequent monitoring process. The Fernberg method lacks the focus and interaction activities that result in lowering workers’ compensation claims costs. The system further lacks recursively reviewing the files. Such continual follow-up, interaction and monitoring updates are simply not found within Fernberg or DiRienzo documentation.

Applicants respectfully submit that the disclosed best practices are not old and well known in the art of workers' compensation claims management processing as asserted by the Examiner. Applicants respectfully asks, if such were true, then why are insurance carriers, TPAs, and internal claims adjusters not following or applying them? Moreover, each workers' compensation claim is unique. The application of particular best practices becomes an art onto itself. Recognizing key issues and knowing how to address them is the key to being able to extend proactive claims management to each and every claim on a consistent basis. Such ability comes from experience and education. This invention promotes and enforces the application of practices that are defined and thoroughly explained. As such, the items listed are not "merely abstract conditions...that do not functionally relate to the method steps" as asserted by the Examiner.

Applicants acknowledge that one of ordinary skill in the art may have been motivated to incorporate a computer into claims management, for the purpose of increasing the speed and efficiency of claims processing. Applicants submit, however, this computer usage is limited to access to maintain historical, current and future review and activity dates according to client contract specifications, as well as posting "optional diary dates" requested by the claims associates. Thus, the claimed invention and subsequently developed unique software program enables the overall system to monitor claims associates and to record findings and recommendations in a streamlined automated manner.

With respect to the rejection of Claim 5, Applicants appreciate the Office Action's admission that the references do not teach each of the limitations as claimed.

Applicants respectfully traverse the characterization of the limitations as “non-functional conditions.” Applicants assert the Fernberg, DiRienzo and Hammond’s methods differ from the claimed invention. As detailed below, the claimed invention not only presents theory or recommends application of best practices, but inherently enforces and teaches the application on each and every claim being audited or monitored by seasoned, experienced, and expert claims associates. Applicants assert such action results in cost effective results and inherently educates the assigned claims adjusters the art of performing proactive claims management activities appropriately and timely on each claim they are confronted with.

With respect to the rejection of Claim 4, for the reasons stated above, Applicants traverse the characterization that Claim 4 is obvious in view of Fernberg and DiRienzo, Anthony and Ahmad. As claimed, the system not only teaches the art of establishing case reserves on a case by case basis, utilizing all known facts and expected adjustments or changes in the medical condition of a claimant, but reinforces the required documentation of the rationale of the calculation of the case reserves at “expected pay-out value.”

Applicants respectfully assert that in the real world “...one of ordinary skill in the art...” does not always have the knowledge nor experience to establish and adjust sound case reserves. As such, it is an object of the system in Claim 4 to provide proper maintenance of the reserve funds. None of the systems cited alone or combined teach this limitation.

Applicants respectfully assert that the theories presented by Fernberg, DiRienzo, Hammond, Anthony, Ahmad further do not teach recursively prompting the assigned

claims adjusters in the application of the claimed “best practices.” The system as claimed provides mitigated exposures and expenses to its clients. The recursive nature of the system inherently provides continued teaching and coaching of the claim associates. Applicants respectfully assert that a single exposure to a list of best practices alone will not provide that type of guidance.

The Examiner may not be aware of how the cited theories, when not enforced through the invention’s auditing and monitoring system’s processes, and the individuals possessing ... “ordinary skill...” have actually placed insurance carriers and employers in peril. Applicants assert that numerous carriers have actually imploded due to inaccurate reserve postings. If case reserves are not calculated at “expected pay-out” value and not periodically reviewed for accuracy based upon known facts and documented expectations based upon experienced judgments and knowledge, claims reserves will be stair-stepped as the claim matures and funding/capital may not be available for the ultimate payout.

With respect to the rejection of Claim 6, the Office Action asserts Fernberg’s disclosure of conducting interviews with the employee, supervisor, and medical provider within 48 hours of the claim being received by the assigned claims adjuster (of an insurance carrier, TPA, or self-administered employer) refers to the industry “three point contact.” Applicants respectfully submit that there is a difference between the “three point contact” and the act of having a nurse conduct an interview after determining a claim is “high risk.” An insurance carrier, TPA, or self-administered employer’s assigned claims adjusters perform the normal “three point contact.” Applicants assert such contact should be made within 72 hours from the actual receipt of a claim. This

contact is critical as it is the initial step of the investigation process of a workers' compensation claim. As claimed, after the initial investigation process and if the claim is designated "high-risk," a registered nurse interviews the claimant within 72 hours of the receipt date of the claim by the assigned claims adjuster. The claimed contact does not replace the "three point contact" made by the assigned claims adjuster. As claimed, the questioner determines if the applicant has a "high risk profile," which enhances the assigned claims adjuster's initial contacts through teaching and coaching of techniques.

The high risk profiling process is a separate contact made prior to the contact by a registered nurse, which augments the assigned claims adjuster's interview. Such contact by a registered nurse, who presents herself as such during the interview, usually achieves greater insight into the alleged employee's medical condition, life style, frame of mind, and other medical conditions that may have an adverse affect on the recuperation period of the alleged sustained work related injury/illness than that performed by a claims adjuster. This may require further explanation. Applicants submit that in today's society, and that at the time of the invention, a claims adjuster is an individual who is usually perceived as being an adversary by a claimant. On the other hand, a registered nurse is an individual perceived as being trustworthy and someone to whom the claimant can talk to in a very open manner about their various situations. Thus, the application of the high risk profiling process as claimed creates additional valuable information that will assist in future communications with the employee/claimant by the assigned claims adjuster and development of action plans that will follow-up on issues presented that would not have otherwise known about had the registered nurse not interviewed the employee/claimant. Such knowledge and

ability to better understand the employee's situation and possible complications will assist the assigned claims mitigate exposure and expense. None of the references teach these limitations.

Applicants accept that medical professionals engage in evaluation of worker's compensation claims. However, nothing in any of the references teach conducting the interview within 72 hours if the claim is categorized "high risk." Ahmad's reference does not disclose whether a vendor medical case manager has been hired to perform such interaction or if the nurse just happens to be in attendance at the examination and is subsequently interviewed by the assigned claims adjuster.

The Office Action states that the DiRienzo reference discloses the computer monitoring of claims. Applicants respectfully submit the DiRienzo reference does not teach monitoring the claim at periodic intervals. As such, the references cannot anticipate Claim 6.

With respect to the rejection of Claims 8 and 9, Applicants respectfully submit that none of the references disclose determining if a claim is "high risk" within 72 hours of an injury. They, therefore, cannot disclose interviewing the employer or medical professional within 72 hours to determine if a claim is "high risk."

With respect to the rejections of Claims 11 and 12, for the reasons stated above, Applicants respectfully traverse the characterization of the claim limitations as "new functional data."

With respect to the rejection of Claim 13, the system ensures that the best practices are being followed within the claims management process and monitors reported claims it teaches the assigned claims adjusters to enlist the assistance of a

registered nurse as deemed appropriate to perform medical case management based on the medical condition of the individual that would prove beneficial to overall management of the specific claim. Applicants assert that it is important that the assigned claims adjusters do not utilize such vendor activities as an offload of their responsibility to the overall management of claims assigned to them. They remain responsible for managing their claims, the incurred expenses, and must continually review vendor activities to determine whether they are producing results, thus controlling expenses on each of their claims. The results must outweigh the expense of such vendors, otherwise the vendors' activities should be ceased.

Thus, the invention's review, monitoring, educational interaction and enforcement of appropriate best practices go beyond that proposed by Fernberg, Ahmad, Anthony and DiRienzo.

As claimed in Claim 6 and its dependents, all insurance claims are initially treated the same. Those claims meeting the criteria for application of the high risk profiling receive the additional, separate contact by a registered nurse immediately upon receipt and a formal report relating the findings, as an extra feature, to ensure appropriate action plan items are included and follow-up on in a timely manner. The additional, professional input by the registered nurse at the onset of the claim can make a difference in how the assigned claims adjuster communicates with the claimant. The experience and knowledge extended by the registered nurse will also assist them in mitigating expenses on the specific claims as underlying and/or secondary have been identified and can be utilized within their action plan to move the claim toward



closure/resolution. As such, Applicants assert the rejections of Claims 6, 12, 13, and 15 are improper.

**CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: \_\_\_\_\_

Aug 9 - 2006

By: \_\_\_\_\_



Garrett C. Donley, Reg. No. 34,579  
Christopher A. Eusebi, Reg. No. 44,672

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

CAE/smb